By letter dated 15 September 1993, the defendants through their solicitors applied for the adjournment of the matter into open Court for "further argument". I certify in writing that I do not require "further argument" (O. 56, r. 2(2) of the Rules of the High Court 1980).

Orders accordingly.

NARAYANAN S/O PONNUSAMY

v.

KANNAMAH D/O PONNUSAMY

HIGH COURT, TAIPING
DATO' HAJI ABDUL MALIK BIN HAJI ISHAK JC
[CIVIL APPEAL NO. 11-3-92 (92)]
15 SEPTEMBER 1993

LANDLORD AND TENANT: Claim against appellant for vacant possession of premises erected on state land - Deed of gift given to respondent by her late father - Appellant continued to occupy dwelling house without payment of rental to respondent - Occupation by appellant was without lawful authority of State Government - Section 425 National Land Code 1965 - Whether deed of gift divested dwelling house on State land to respondent - Claim founded on illegality - Appellant did not plead/raise illegality in statement of defence - Effect of failure to plead - Function of pleadings.

PRACTICE & PROCEDURE: Statement of defence did not plead illegality of respondent's claim against appellant - Function of pleadings - Whether appellate Court would take notice of such illegality which is patent on face of statement of claim but not pleaded - Enforceability of illegal contract.

LEGAL PROFESSION: Locus standi of solicitor to appear and argue appeal - Notice of change of solicitor not filed and served - Solicitor who prepared statement of defence different from solicitor at appeal - Status of previous solicitor in view of the fact that notice of change of solicitor not filed and served - New solicitor filed notice of appointment of solicitor instead of notice of change of solicitor - Order 11 r. 1(1)(2), 5(2) of Subordinate Court Rules 1980

This was an appeal the decision of the Magistrate's Court, Taiping which ordered vacant possession of premises erected on state land to the respondent. The appellant who was the occupier of the said premises has lodged this appeal.

Held:

[1] The trial Court in giving judgment to the respondent had blundered and failed to consider that the respondent's claim was founded on an illegality as the dwelling house stood on State land and the deed of gift could not have divested the dwelling house to the respondent. The occupation of the State land was without lawful authority and punishable under s. 425 of the National Land Code 1965.

[2] A party is bound by his pleadings and his case is confined to the issues raised on the pleadings unless and until they are amended. Nevertheless, even where, as in the present appeal, the illegality is not pleaded by the appellant, this Court will not enforce a deed of gift founded on unlawful occupation of State land which is illegal, or arises out of an illegal transaction, where the illegality is disclosed on the respondent's own evidence and on the respondent's statement of claim and it appears that the respondent was implicated therein.

[3] The Court is empowered at its will to adjudicate the case according to the law even though the issue is not pleaded. Thus, where a statute makes a particular contract or class of contracts void, the Court will refuse to allow an action to be maintained thereon, even though the objection is not pleaded and parties do not desire to rely on it. In the present appeal, the illegality is patent on the face of the statement of claim, it would be a good ground for an objection on point of law and this Court is entitled to act upon it.

[4] The appellant is nothing but a squatter. Squatters have no right either in law or in equity. It is up to the state authority to decide on the next course of action. In the circumstances, the appeal was allowed but there was no order as to costs.

[Appeal allowed. No order as to costs].

Cases referred to:
Thorp v. Holdsworth [1876] 3 Ch. D 637 at 619 ***(refd)***
Esso Petroleum Co. Ltd. v. Southport Corporation [1956] AC 218 at 238/[1955] 3 All ER 864 at 868 ***(refd)***
Spedding v. Fitzpatrick [1888] 38 Ch. D 410 at 414 ***(refd)***
Blay v. Pollard & Morris [1930] 1 KB 628 at 634 ***(refd)***
London Passenger Transport Board v. Moscrop [1942] AC 332 ***(refd)***
Scott v. Brown [1892] 2 QB 724 ***(refd)***
Biggs v. Boustead [1951] 1 All ER 92 ***(refd)***
Leong Poh Chin v. Chin Thin Soo [1959] 25 MLJ 246 ***(refd)***
Wai Hin Tin Mining Co. Ltd. v. Lee Chow Beng [1968] 2 MLJ 251 ***(refd)***
North Western Salt Co. v. Electrolytic Alkali Co. [1914] AC 46 ***(refd)***
Edler v. Auerbach [1950] 1 KB 359 ***(refd)***
Gedge v. Royal Exchange Assurance [1900] 2 QB 214 ***(refd)***
Re Mahmoud [1921] 2 KB 716 ***(refd)***
Alexander v. Rayson [1936] 1 KB 169 ***(refd)***
Mason v. Clarke [1955] AC 793 ***(refd)***
Royal Exhange Ass. Corpn. v. Vega [1902] 2 KB 384 ***(refd)***
Clay v. Yates [1956] IH & N 73 ***(refd)***
Pearce v. Brooks [1866] LR 1 Ex 213 ***(refd)***
Shaw v. Benson [1883] 29 Ch.D 596 ***(refd)***
Wild v. Simpson [1919] 2 KB 54 ***(refd)***
Brightman v. Tate [1919] 1 KB 463 ***(refd)***
Bostel Bros. v. Hurlock [1949] 1 KB 74 ***(refd)***
Shackell v. Rosier [1836] 2 Bing NC 634 ***(refd)***
Re Mahmoud & Ispahani [1919] 1 KB at 726 ***(refd)***
Mohamed Said v. Fatimah [1962] 28 MLJ 328 ***(refd)***
Papoo v. Verriah [1966] 1 MLJ 127 ***(refd)***
Fatimah v. Moideen Kutty [1969] 1 MLJ 72 FC ***(refd)***
Sidek bin Hj. Muhamad & 461 Ors. v. Government of the State of Perak & Ors. [1982] CLJ 244/[1982] 1 MLJ 313 FC ***(refd)***

Legislation referred to:
National Land Code 1965, s. 425
Stamp Act 1981, s. 93(3)
Subordinate Courts Rules 1980, O. 11 rr. 1(1), 2, 5(2)(3)

For the appellant - Jula Singh; M/s. Paramjit & Co.
For the respondent - Lee Siew Lung; M/s. Loh Poh Seng & Co.

JUDGMENT

Haji Abdul Malik bin Haji Ishak JC:
This is an appeal against the decision of the learned Magistrate, Magistrate's Court, Taiping Perak ("the trial Court") in giving vacant possession of premises known as No. 24, Kampong Aman, Ulu Tupai, Pokok Assam, Taiping ("the said premises") erected on State land to the respondent.

The appellant (the defendant in the Court below) had occupied the said premises and together with his late father by the name of Ponnusamy s/o Sellamuthu, built a house on it. It was on the invitation of his late father that the appellant occupied the said premises, renovated the house therein ("the dwelling house") and remained in occupation with his wife and children since 1964. The said premises stood on State land and by a deed of gift dated 26 December 1974. Ponnusamy s/o Sellamuthu bequeathed, for love and affection, the dwelling house to his daughter, the respondent (the plaintiff in the Court below). The deed of gift was properly executed, attested and stamped and it described the State land as being comprised under PTLM 125 (47) (641/63-3524). Notwithstanding the deed of gift, the appellant continued to occupy, peacefully the dwelling house. By a stroke of misfortune, Ponnusamy s/o

Sellamuthu died on 14 July 1981 ("the deceased"). The appellant continued occupation of the dwelling house without paying a single cent, by way of rental, to the respondent. By letter dated 23 December 1986, the respondent through her solicitors issued a notice to quit to her brother, the appellant. Naturally, the appellant contested the suit.

The trial Court in giving judgment to the respondent had blundered and failed to consider that the respondent's claim was founded on an illegality as the dwelling house stood on State land and the deed of gift could not have divested the dwelling house to the respondent as the occupation of the State land was without lawful authority and punishable under s. 425 of the National Land Code 1965.

It was argued that the appellant did not plead illegality and therefore, the appellate Court could not take notice of such illegality. It is true that where the defendant relies upon the defence of illegality, he should distinctly raise that defence by his pleading. The function of pleadings is to give fair notice of the case which has to be met and to define the issues on which the Court will have to adjudicate in order to determine the matters in dispute between the parties (See *Thorp v. Holdsworth* [1876] 3 Ch. D 637 at 619, *Esso Petroleum Co. Ltd. v. Southport Corporation* [1956] AC 218 @ 238 and at [1955] 3 All ER 864 @ 868). It follows that the pleadings enable the parties to decide in advance of the trial what evidence will be needed. Under the old system of pleading, at common law, the procedure was to conceal as much as possible of what was going to be proved at the trial, **but under the modern day system** a party must so state his case that his opponent will not be taken by surprise (see *Spedding v. Fitzpatrick* [1888] 38 Ch. D 410 at 414 per Cotton LJ). Thus, a party is bound by his pleadings and his case is confined to the issues raised on the pleadings unless and until they are amended (*Blay v. Pollard & Morris* [1930] 1 KB 628 @ 634: *London Passenger Transport Board v. Moscrop* [1942] AC 332) **but** even **where** as in the present appeal, **the illegality is not pleaded by the appellant** this Court will not enforce a deed of gift founded on unlawful occupation of State land which is illegal or arises out of an illegal transaction, where the illegality is disclosed on the respondent's own evidence and on the respondent's statement of claim and it appears that the respondent was implicated therein (see *Scott v. Brown* [1892] 2 QB D 724 per Lindley LJ at p. 728 where his Lordship was discussing the reluctance of the Court to enforce a contract which is illegal and this was followed in *Biggs v. Boustead* [1951] 1 All ER 92, and nearer home, is the case of *Leong Poh Chin v. Chin Thin Soo* [1959] 25 MLJ 246 where the Court held that though the illegality had not been pleaded, it was the duty of the Court to take the point although the litigant had not taken it. Likewise, Chang Min Tat J. (as he then was) in *Wai Hin Tin Mining Co. Ltd. v. Lee Chow Beng* [1968] 2 MLJ 251, held that the plaintiffs' claim was founded on an illegality as the loan was made from the company's fund in contravention of article 5 of the company's articles of association and certain provisions of the Companies Ordinance and that the Court could take notice of the illegality although it was not pleaded by the defendant). For comparisons, see the following cases of *North Western Salt Co. v. Electrolytic Alkali Co.* [1914] AC 46 (contract illegal for restraint of trade and adopted in *Edler v. Auerbach* [1950] 1 KB 359); *Gedge v. Royal Exchange Assurance* [1900] 2 QB 214 (marine insurance illegal owing to "p.p.i" clause); *Re Mahmoud* [1921] 2 KB 716 (contract for sale in contravention of statutory order) and, lastly, *Alexander v. Rayson* [1936] 1 KB 169 (contract capable of being lawfully performed but to be used for an unlawful purpose). It may be useful to compare these cases with *Mason v. Clarke* [1955] AC 793. The Court is empowered at its will to adjudicate the case according to the law even though the issue is not pleaded. Thus, where a statute makes a particular contract or class of contracts void, the Court will refuse to allow an action to be maintained thereon, even though the objection is not pleaded and the parties do not desire to rely on it (see *Royal Exhange Ass. Corpn. v. Vega* [1902] 2 KB 384, where the contract was invalid under the Stamp Act 1891, s. 93(3)). But if, like the present appeal, the illegality is patent on the face of the statement of claim, it would be a good ground for an objection in point of law and this Court is entitled to act upon it (*North Western Salt Co. v. Electrolytic Alkali Co. (supra).*

My research further shows that no action can be brought on a promise to do an illegal act, or to do an act with an illegal object (*Clay v. Yates* [1956] IH & N 73; *Pearce v. Brooks* [1866] LR 1 Ex. 213: *Shaw v. Benson* [1883] 29 Ch.D 596 (agreement for service illegal under Apothecaries Acts):

Wild v. Simpson [1919] 2 KB 54 (champertous agreement); *Brightman v. Tate* [1919] 1 KB 463 (contract for building without licence and applied in *Bostel Bros. v. Hurlock* [1949] 1 KB 74); and no action can be brought on a promise the consideration for which is wholly or in part illegal or against public policy (*Shackell v. Rosier* [1836] 2 Bing NC 634). Bankes LJ succinctly said in *Re Mahmoud & Ispahani* [1919] 1 KB at 726 that "there is no qualification to the established rule of law that the Court will never lend its aid in the enforcement of a contract which is *ab initio* illegal.

So much on illegality. I shall now proceed on the other points.

Even if the deceased held a temporary occupation licence on the State land in question (see the legend P.T. L.M. 125 (47) (641/63-3524) appearing in the deed of gift), that licence was temporary and not transferable and upon the death of the deceased on 14 July 1981, the licence expired. It follows, therefore, that at the time the plaintiff instituted the proceedings for vacant possession and other ancillary prayers, she had no right to the possession of the State land notwithstanding the presence of the deed of gift. The issuance of a temporary occupation licence to the deceased will not convert the State land into an alienated land. Simply put, after the issue of the temporary occupation licence the land was still State land and the deceased had a mere licence to occupy it temporarily (see *Mohamed Said v. Fatimah* [1962] 28 MLJ 328, *Papoo v. Verriah* [1966] 1 MLJ 127 and *Fatimah v. Moideen Kutty* [1969] 1 MLJ 72 FC). It is now trite law that title to State land can only be acquired by the process of alienation effected in accordance with the provisions of the National Land Code 1965 (*Sidek bin Hj. Muhamad & 461 Ors. v. Government of the State of Perak & Ors.* [1982] 1 MLJ 313 FC. There was no such alienation here.

Much fuss was made before the trial Court and before me, in regard to the *locus standi* of Messrs. Paramjit & Co. to appear and argue on behalf of the appellant. From the appeal record, it appears that Messrs. Madhi, Param & Co. prepared the statement of defence and acted for the appellant. On the day of hearing before the trial Court, Messrs. Madhi, Param & Co. discharged themselves by letter from acting for the appellant. The trial Court proceeded with the trial in the absence of the appellant's Counsel and thereafter reserved judgment. On the date of the judgment, Messrs. Paramjit & Co. appeared for the appellant by filing a notice of appointment of solicitor under r. 2 O. 11 of the Subordinate Courts Rules 1980 ("SCR") and this brought adverse criticism by the respondent's Counsel. It is pertinent to point out that a party to an action may change his solicitor without an order of the Court but, until the notice of the change is filed in Court and a copy of it is served on all the other parties to the action, the solicitor's name appearing on record will be considered the solicitor of the party until the final conclusion of the action (see r. 1(1), O. 11 of the SCR). It is also clear that an application by a solicitor, who has ceased to act, for an order declaring that he has ceased to act must be in Form 25 and it must be supported by an affidavit stating the grounds of the application (r. 5(2) O. 11 of the SCR). The notice and the affidavit must be served on the party for whom the solicitor acted, unless the trial Court otherwise directs. The order should be in Form 26 but such an order will not affect the rights of the solicitor and the party as between themselves (rule 5(3), Order 11 of the SCR). Clearly, therefore, from the appeal record, in discharging themselves from acting for the appellant, Messrs. Madhi Param & Co. had failed to comply with the rules as set out in the SCR and likewise, Messrs. Paramjit & Co., in acting for the appellant had failed to abide by the rules of the SCR. This means that on record, Messrs. Madhi Param & Co. is the Counsel for the appellant until the final conclusion of the action.

Be that as it may, being state land, it is a formidable obstacle to the respondent to lay claim on it. Only the State Authority can vest state land to the respondent by way of an alienation. Both the parties should consider themselves fortunate that the state authority had allowed their late father to stay on the State land and it now appears, that the state authority is also allowing the appellant to squat on the same State land in question. The appellant is nothing but a squatter. Squatters have no right either in law or in equity. It is up to the state authority to decide on the next course of action. In the circumstances, the appeal is allowed. However, in view of the special features in the present appeal, there will be no order as to costs here and in the Court below.

Appeal allowed.